IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2889 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KA MALLE PHARMACEUTICAL LTD PLOT NO 6005, GIDC
Versus
GUJARAT POLLUTION CONTROL BOARD

Appearance:
MR MIHIR H JOSHI for Petitioner
MR HARESH J TRIVEDI for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 03/05/2000

ORAL JUDGEMENT (Per J.M. Panchal, J.):

1. Rule. Mr. H.J. Trivedi, learned counsel waives service of rule on behalf of the respondent. Having regard to the facts of the case and in view of the joint request made by the learned counsel for the parties, the petition is taken up for final hearing today.

2. By means of filing this petition under Article 226 of the Constitution the petitioner has prayed to

issue a writ of mandamus or any other appropriate writ, order or direction to quash and set aside order dated February 8, 2000 by which application submitted by the petitioner for No Objection under the provisions of Water (Prevention and Control of Pollution) Act, 1974 ('Water Act' for short hereinafter) is rejected on the basis of directions dated October 21, 1999 issued in Special Civil Application No. 4473 of 1997.

3. The petitioner is a Public Limited Company registered and incorporated under the provisions of the Companies Act, 1956. It is inter alia engaged in the manufacturing of bulk drugs at its unit situated at Ankleshwar since 1986. The petitioner has obtained consent under the Water Act on March 23, 2000 which is valid upto September 30, 2000. In December 1998 the petitioner entered into a tie-up with Ballarpur Industries Limited for the manufacture of Tetra Bromo Bis-Phenol A ('TBBA' for short hereinafter). According to the petitioner, by March 1999 an investment of Rs.4.73 crore was made in setting up the project. The petitioner applied for No Objection Certificate for manufacturing the aforesaid product on August 17, 1999. That application was rejected by the respondent on the ground that a copy of the agreement entered into between the petitioner and Enviro Technology Limited, Ankleshwar was not submitted before the GPCB. The petitioner vide letter dated October 8, 1999 replied and submitted a copy of the said agreement for perusal of the GPCB. The respondent by letter dated February 8, 2000 has informed the petitioner that the application for No Objection Certificate is rejected on account of the directions dated October 21, 1999 issued by the High Court in Special Civil Application No. 4473 of 1997. The petitioner has averred in the petition that the petitioner cannot be considered to be a new industry within the meaning of judgment rendered in Special Civil Application No. 4473 of 1997 and, therefore, the respondent is not justified in rejecting the application for No Objection Certificate on the basis of directions of the High Court issued in Special Civil Application No. 4473 of 1997. Under the circumstances, the petitioner has filed present petition and claimed relief to which reference is made earlier.

4. On notice being served, Mr. R.C. Tamboli, Environmental Engineer of GPCB, Gandhinagar has filed reply affidavit stating that manufacture of new product amounts to setting up new industry within the meaning of directions issued in Special Civil Application No. 4473 of 1997 and, therefore, the petitioner is not entitled to

claim relief mentioned in the petition. It is also averred in the reply that if the petitioner is permitted to manufacture TBBA it would enhance its manufacturing activity resulting into additional discharge of effluent and, therefore, the petition should not be allowed.

5. Heard the learned counsel for the parties.

6. Manufacturing of a new product would amount to setting up a new industry so far as that product is concerned. But, in our view, the present case is squarely covered by the directions which were issued on February 8, 2000 in Special Civil Application No. 81 2000. In similar circumstances, M/s. Amar Pigments through its partner Ajay Desai had filed Special Civil Application No. 81 of 2000 against the GPCB claiming similar relief. Therein also site clearance certificate was issued prior to October 21, 1999 on which date directions were issued by the High Court in Special Civil Application No. 4473 of 1997 restraining new industries from discharging their trade effluent in Amla Khadi. Even the application for No Objection Certificate was also submitted in that case prior to directions dated October 21, 1999 which were issued in Special Civil Application No. 4473 of 1997. After considering the facts of the case, Division Bench comprising M.S. Shah & R.R. Tripathi, JJ., had issued Rule by order dated February 8, 2000 and given interim direction to the GPCB to consider the application of M/s. Amar Pigments for No Objection Certificate in accordance with law and in light of the observations made in the order. It was also directed to consider the grant of No Objection Certificate for trial production on such terms and conditions on which GPCB normally grants No Objection Certificate in similar case. Further direction given by the High Court in the said petition was that the matter should be considered by the GPCB within two weeks from the date of the order. Pursuant to the interim order dated February 8, 2000 in Special Civil Application No. 81 of 2000 case of M/s. Amar Pigments was considered by the GPCB and No Objection Certificate was granted to it vide letter dated February 18, 2000. In the facts of the present case we find that site clearance certificate was granted long back whereas application for No Objection Certificate was submitted before October 21, 1999 on which date certain directions were issued by the High Court in Special Civil Application No. 4473 of 1997. Under the circumstances, we are of the opinion that the course which was adopted by the Division Bench in Special Civil Application No. 81 of 2000 deserves to be adopted in the present petition by directing the GPCB to consider

the application of the petitioner for No Objection Certificate in accordance with law and in the light of observations made by the High Court in order dated February 8, 2000 as well as its own action of grant of No Objection Certificate to M/s. Amar Pigments.

7. For the foregoing reasons, the petition partly succeeds. The order dated February 8, 2000 rejecting the application submitted by the petitioner for No Objection Certificate on the basis of directions dated October 21, 1999 issued by the High Court in Special Civil Application No. 4473 of 1997 is hereby set aside and quashed. The GPCB is directed to process and consider the application submitted by the petitioner on merits and in accordance with law after taking into consideration order dated February 8, 2000 which was passed in Special Civil Application No. 81 of 2000 and its own action of grant of no objection certificate to M/s. Amar Pigments. The application submitted by the petitioner for No Objection Certificate shall be considered as early as possible and preferably within four weeks from today. Rule is made absolute to the extent indicated hereinabove with no order as to costs.

3.5.2000. (J.M.Panchal, J.)

(A.M. Kapadia, J.)